

REMARKS

Claims 1-6, 10-16, and 18 are pending in this application. Favorable reconsideration and allowance of the pending claims are respectfully requested.

Claim Rejections – 35 U.S.C. § 103(a)

Claim 1-3 and 10-14 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent Publication Number (USPPN) 2005/0152314 to Sun et al. ("Sun") in view of International Publication Number 01/37474 to Andre ("Andre") and further in view of USPPN 2004/0161058 to Ebiko et al. ("Ebiko"). Claims 4, 15, 16, and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sun in view of Andre in view of Ebiko and further in view of USPPN 2004/0125235 to Kim et al. Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sun in view of Andre in view of Ebiko and further in view of USPPN 2004/01242665 to Papathanasion et al. Claim 6 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Sun in view of Andre in view of Ebiko and further in view of United States Patent Number 6,757,272 to Abeta et al. Applicant respectfully traverses these rejections.

The Office rejected the Declaration under 37 C.F.R. § 1.131 as failing to show diligence. However, Exhibit A disclosed that the employer, Intel, approved the preparation and filing of the Application on March 7, 2003. Additionally, the diligence of 35 U.S.C. 102(g) relates to reasonable "attorney-diligence." *See Keizer v. Bradley*, 270 F.2d 396, 397, 123 USPQ 215, 216 (CCPA 1959). Reasonable attorney-diligence "does not require that 'an inventor or his attorney drop all other work and concentrate on the particular invention involved.'" *Emery v. Ronden*, 188 USPQ 264, 268 (Bd. Pat. Inter. 1974)." *See* MEPEP 2138.06. Intel's files state that the disclosure for this Application was opened and assigned to attorney Mike Proksch on April 17, 2003. Attorney Mike Proksch reassigned the work to Ed Brake on October 16, 2003. The application was filed on December 30, 2003. Therefore, reasonable diligence was performed with respect to the patent application.

Although Applicant disagrees with the rejection of the Declaration set forth in the final Office Action, Applicant has submitted a second Declaration in order to facilitate prosecution on the merits. Applicant respectfully submits herewith a second Declaration under 37 C.F.R. §1.131 by the inventors showing proof of conception and diligence to filing from a date before November 4, 2003, the priority date of Sun. Applicant submits, therefore, that Sun is not available as prior art and that the rejections based on Sun are improper.

Accordingly, Applicant respectfully requests withdrawal of the § 103(a) rejections of claims 1-6, 10-16, and 18.

Conclusion

It is believed that claims 1-6, 10-16, and 18 are in condition for allowance. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the limitations of the independent claims and dependent claims listed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the claims from the cited references, taken alone or in combination, based on additional features contained in the independent or dependent claims that were not discussed. A detailed discussion of these differences is believed to be unnecessary at this time.

The Examiner is invited to contact the undersigned to discuss any matter concerning this application.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. § 1.16 or § 1.17 to deposit account 50-4238.

Respectfully submitted,

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Rebecca M. Bachner, Reg. No. 54,865
Under 37 CFR 1.34(a)

Dated: June 24, 2009

KACVINSKY LLC